

**LAW OFFICES OF  
EUGENE GOLDSTEIN AND ASSOCIATES  
150 BROADWAY, SUITE 1115  
NEW YORK, NY 10038  
212-374-1544  
Fax 212-374-1435  
[EGLAW@AOL.COM](mailto:EGLAW@AOL.COM)  
<http://www.eqlaw-group.com>**

May 1, 2012

**Eugene Goldstein**

**Lawrence Goldstein  
Lucy G. Cheung  
Michael J. Goldstein**

**MEMORANDUM**

Jacqueline Singh  
Ana Peña  
Legal Assistants

To: International Education Program Administrators

- 1) H-1B Cap Count
- 2) Annual Employment Based Immigration Limits for China and India Reached
- 3) Crediting On-line Courses
- 4) ICE Policy on Accreditation of ESL Training Programs
- 5) SEVP Publishes Vol. 2, Issue 2 of "SEVP Spotlight"
- 6) Campus Sentinel Slideshow
- 7) DHS Releases Memorandum on Failure to Comply with NSEERS
- 8) USCIS Release on Expediting Review for "Certain Cases Affected by Specific Administrative Inaccuracies"
- 9) Syrian Special Student Severe Hardship, and Syrian TPS
- 10) Somalia TPS Extended and Redesignated
- 11) China and Brazil Visa Issues

1) H-1B Cap Count

As of April 27, 2012 approximately 29,200 H-1B cap-subject petitions were receipted against the 65,000 total cap.

Further, USCIS advised that the 20,000 cap for beneficiaries with advanced U.S. degrees had received 12,300 petitions.

It appears that this year numbers are running considerably ahead of the last three years. It is too early to make predictions, but, numbers will probably run out earlier than they did last year-which was around Thanksgiving.

2) Annual Employment Based Immigration Limits for China and India Reached

For individuals from both India and China who have established immigrant priority dates for their green cards, the State Department has confirmed that the annual quotas in the EB-2 category for China-mainland born and for India have been reached. This category is for advanced degree professionals. As of April 11, 2012 no further visas will be issued for this category, although USCIS will continue to accept adjustment applications based upon cut-off dates published in the April and May Visa Bulletins. No further places in this category will be available until the beginning of the new fiscal year on October 1, 2012.

3) Crediting On-Line Courses

At a Nebraska Service Center Engagement Teleconference for Business Product Lines held on April 12, 2012 it was questioned whether a masters degree which was obtained online from an accredited U.S. University would be acceptable for the EB-2 advanced degree professional immigrant category. The Service Center stated "Many major universities provide online courses. If the degree is from an accredited University, it would be accepted." This use of online courses is distinct from the limit on F-1 students to one online course per semester.

4) ICE Policy on Accreditation of ESL Training Programs

On April 20, 2012 ICE posted its interpretation regarding "The accreditation of English Language Training Programs Act" It noted that SEVP is presently sending out Notices of Intent to Withdraw to stand-alone ESL training programs which are not in compliance with the Accreditation Act. The Notice requires submission of evidence within thirty days of service that the program is in compliance. Programs on university campuses which are referred to as

“Combined English Language training programs of study,” will receive an out of cycle review which will require the school to submit evidence to SEVP within thirty days of service that they are in compliance with SEVP requirements.

Although there is some controversy over whether combined ESL programs should be evaluated separately from their parent university program, ICE appears to be insistant on the need for recertification. The statements in the ICE posting appear to imply that stand-alone programs will receive a Notice if they are not in compliance with the Act. However, the phrase “not in compliance” is not used in the paragraph regarding combined English language training programs which would imply that all combined programs will receive an out of cycle review. Perhaps, this issue should be taken up with NAFSA Headquarters. The ICE publication may be found [here](#).

5) SEVP Publishes Vol. 2, Issue 2 of “SEVP Spotlight”

SEVP published the latest issue of *SEVP Spotlight* Vol. 2, Issue 2, at the end of April. The big news is that the National Security Investigations Division (NSID) of which SEVP is a part has been elevated to assistant directorate level within ICE. This means that SEVP, as one of three divisions under NSID, has been given greater stature. According to Louis M. Farrell, who is pictured on the first page of the *Spotlight* as a smiling bewhiskered benevolent presence “This re-organization is a testament to the importance of SEVP’s national security mission, and it will allow SEVP to collaborate more effectively with our counterparts across the law enforcement spectrum.” The re-organization, however, will not change the working relationship with SEVP’s constituency. As stated, “The internal organizational structure of SEVP would remain the same as we work together to support ICE’s national security mission.”

The second page of the *Spotlight* presents a mission statement for Homeland Security Investigations (*HSI*). *HSI* investigates criminal exploitation of the student visa system, among other crimes. Unfortunately, no statistical data or even anecdotal data, has been offered by ICE or SEVP justifying the need for this additional police agency.

6) Campus Sentinel Slideshow

It reasonably could be assumed that an enforcement agency would be knowledgeable about the entities within its enforcement sphere. However, a review of the current ICE dog and pony slide show entitled “Project CAMPUS Sentinel and School Fraud Overview” makes it appear that HSI needs to make a long climb up the learning curve. Instead of recognizing the general integrity of those individuals administering international education programs, this new enforcement authority appears to be operating under the assumption that

illegal schemes are rife within the system. As with many law enforcement agencies it assumes that the aberration is the norm. The slideshow sets forth “common compliance problems including DSO and PDSO responsibilities, SEVIS reporting requirements, FERPA, full course of study, distance and on-line learning, and OPT and CPT. Never before has there been any finding that there needs to be a specific agency with responsibilities for criminal enforcement of what has always been considered a civil program administration.

Specific items mentioned for abuse are the use of a student visa as a means of immigrating to the U.S. When did immigrant intent become a criminal matter? When did issues of “full course of study” become criminal? A review of the slides regarding OPT/CPT, FERPA etc. only reinforces an unsupported justification for a new, unnecessary law enforcement agency tasked with criminalizing non-criminal issues.

For an agency which is presumed to be knowledgeable about its enforcement constituency, it is jarring to see that slide thirteen, regarding practical training, notes that “The DSO must certify on Form I-538 that, among other things, upon the DSOs information and belief, employment comparable to the proposed employment is not available to the student in the country of the student’s foreign residence” Did anybody tell these folks that the I-538 was discontinued years ago?

The slideshow also lists red flag indicators of illegal activity which include a school’s providing instruction to non-immigrants without being SEVP certified. This red flag is beyond the authority of enforcement of F-1 compliance issues and would criminalize otherwise legally permitted attendance at both certified and non certified schools which enroll undocumented individuals. Another red flag indicator of radicalization, is the shedding of an old persona and adoption of a strict new way of thinking and acting. What if a student joins ROTC? Another indicator of radicalization is “prolonged paranoia of conspiracies.” Where was HSI when Richard Nixon was at the top of his game?

Unfortunately, the slideshow is not online.

7) DHS Releases a Memorandum on Failure to Comply with NSEERS

On April 16, 2012 the Department of Homeland Security issued a Memorandum regarding the effects of an individual’s failure to comply with the NSEERS registration system. It may be remembered that on April 28, 2011 DHS announced the removal of the list of countries whose nationals had been subject to NSEERS registration. On that date all special registration and reporting requirements under NSEERS were suspended. The issue then became how

non-compliant individuals were to be treated for purposes of immigration benefits. The Memorandum states:

In light of DHS's suspension of the NSEERS program, it has become necessary to clarify the limited circumstances under which negative immigration consequences, such as a denial of a benefit, finding of inadmissibility, or commencement of removal proceedings, will result from an alien's prior failure to comply with NSEERS requirements. This memorandum clarifies that noncompliance, in and of itself, is not a sufficient basis for such consequences to adhere. Rather, negative immigration consequences may apply only where DHS personnel have determined, based on the totality of the evidence, that an alien's NSEERS violation was willful.

However, if the failure to register was found to be deliberate, voluntary or intentional, as distinguished from involuntary unintentional or otherwise reasonably excusable, non compliance may be considered as willful and constitute a "failure to maintain non-immigrant status." However, the Memorandum goes on to note that DHS personnel retain prosecutorial discretion in these matters.

8) USCIS Release on Expediting Review for Certain Cases Affected by Specific Administrative Inaccuracies"

On April 4, 2012 USCIS published a Notice entitled "USCIS to Expedite Review for Certain Cases Affected by Specific Administrative Inaccuracies." The following chart was provided which may be found below.

Administrative Error Categories	
IF	AND
1. USCIS issued an adverse decision based solely on a customer's failure to respond to a Request for Evidence (RFE), Notice of Intent to Deny (NOID), or Notice of Intent to Revoke (NOIR)	there is documentary evidence that the customer responded to the RFE, NOID, or NOIR, and USCIS received the response in a timely fashion.
2. USCIS issued an adverse decision based solely on a customer's failure to respond to an RFE, NOID, or NOIR	USCIS determines there is evidence in a USCIS system that the RFE, NOID, or NOIR was not sent to the petitioner/applicant or, if there is a valid Form G-28 on file, to the attorney or representative of record.
3. USCIS issued an adverse decision based solely on a	USCIS determines there is evidence that the customer properly submitted a change of address prior to the

customer's failure to appear at a biometrics appointment or failure to respond to an RFE, NOID, or NOIR	issuance of the RFE, NOID, NOIR, or biometric appointment notice; however USCIS sent the RFE, NOID, NOIR, or biometric appointment notice to a previous or improper address.
4. USCIS issued an adverse decision based solely on a customer's failure to appear at a biometrics appointment	there is documentary evidence that the customer attended the appointment or made a valid, timely request that it be rescheduled.

USCIS pledges to respond to these problems within 5 days of notice – presumably to the National call in number. It is noted that inquiries will not stop appeal times from running.

9) Syrian Special Student Severe Hardship, and Syrian TPS

The following is the text of an edited email sent to the NAFSA Bulletin Board by our ebullient Region X Regbud, Lucy Cheung:

Employment Authorization for Syrian F-1 Nonimmigrant Students:

Last week, the Department of Homeland Security published a Notice in the *Federal Register* regarding "Employment Authorization for Syrian F-1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Civil Unrest of Syria Since March 2011." The Notice was effective Tuesday, April 3, 2012, and will remain in effect until October 3, 2012 (unless extended). For schools which have Syrian F-1 students, the *Federal Register* provides detailed information on what to enter into SEVIS and what the eligibility requirements are for Syrian F-1 students. Below is a summary of the main points, please refer to the *Federal Register* which can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-04-03/pdf/2012-7960.pdf>. According to the Notice, there are over 500 Syrian F-1 students currently in US.

- The Notice provides three types of relief including less stringent requirements (1) to obtain employment authorization; (2) to work an increased number of hours while school is in session; and (3) to a reduced course load while continuing to maintain F-1 student status.
- F-1 students granted employment authorization through the Notice will be deemed to be engaged in a "full course of study" for the duration of their employment authorization,

and provided they remain registered for a minimum of six semester/quarter hours of instruction per academic term for undergraduate students, and a minimum of three semester/quarter hours of instruction per academic term for graduate students.

- Notwithstanding the minimum course load requirement set forth by DHS, students must still meet the school's minimum course load requirements.
- F-1 students who already have on-campus or off-campus employment authorization do NOT have to apply for a new EAD card. However, DSO's must enter a statement in the remarks field of the SEVIS student record in order to benefit from this Notice. (Please see page 20039 of the *Federal Register* for the specific language.)
- F-2 dependents are not eligible for employment authorization under the Notice.
- The benefits under the Notice only apply to students who were lawfully present in the US in F-1 status as of April 3, 2012 and who were (1) enrolled in an institution that is SEVP certified; (2) maintaining F-1 status; and (3) experiencing severe economic hardship as a direct result of the civil unrest in Syria.
- Students who are granted on-campus employment authorization under the Notice do NOT have to file an application with USCIS. However, the DSO's must enter a statement in the remarks field of the student's SEVIS record. (Please refer to page 20040 for specific language).
- Students CANNOT begin working off campus until they receive the EAD card from USCIS.
- Students may apply for TPS status and for benefits under the Notice at the same time, but they must satisfy the eligibility requirements for both in order to maintain F-1 status and TPS concurrently.

The Syrian special student program should not be confused with Temporary Protected Status as mentioned in the last bullet point, which was also granted as noted in our April memorandum. Whether to use the F-1 benefits or the TPS benefits has become an issue. Each individual's situation must be specifically evaluated. However, TPS work authorization is broader than that in the student regulation, and so long as the individual is still maintaining the minimal requirements of the student program, they will be able to be restored to F-1 status when and if TPS benefits are terminated.

10) Somalia TPS Extended

On May 1, 2012 the “Federal Register” carried a Notice that Temporary Protected Status had been extended and re-designated for Somalia from September 18, 2012 through March 17, 2014. Therefore, existing beneficiaries of this program may extend their TPS status, and new applicants will be accepted as a result of the “ongoing armed conflict.” It was estimated that there are approximately 250 current TPS beneficiaries who are eligible to re-register and fewer than 1,000 additional individuals who may be eligible under the re-designation. The Notice with filing instructions may be found [here](#).

11) China and Brazil Visa Issues

On April 9, 2012 the Secretary of State, Hilary Rodhman Clinton, announced that two new consulates will be opened in Brazil, one at Belo Horizonte and one in Porto Alegre, in order to keep up with Brazil’s demand for visas. It was also noted that a Brazilian “Science Without Borders Program” will send one hundred thousand Brazilian students to the world’s top universities to study the STEM subjects and that seven hundred of those Brazilian students are already in the United States with thousands expected in the next few years. The Secretary of State noted that:

This program is an excellent complement to President Obama’s educational initiative, which is called 100,000 Strong in the Americas. Our goal is to increase the numbers of Latin American and Caribbean students in the United States to 100,000 each year, and we want to send 100,000 American students to the region over the next 10 years as well.

An announcement by the State Department on April 18, 2012 noted that in Brazil 550,000 visas were issued in the first half of fiscal year 2012 compared to 350,000 visas during the same time frame in 2011; and that in China 453,000 visas were issued in the first half of the year compared to approximately 310,000 visas in the same time frame in 2011. It was also noted that wait times for visas in both Brazil in China have dropped dramatically. The State Department is also exploring the addition of visa issuance service at a consulate in Wuhan, China.



*Many thanks for your comments, your suggestions and for referring your students, scholars and faculty members.*

*Please let me know if you have any questions, or if you would like copies of any of the materials covered.*

*Note: The information provided in this Memorandum is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Readers must not act upon any information without first seeking advice from a qualified attorney. Neither the publisher, nor any contributor is responsible for any damages resulting from any error, inaccuracy, or omission contained herein.*